Carolinas HealthCare System

August 17, 2012

Ms. Nadine Pfeiffer
Branch Manager
North Carolina Division of Health Service Regulation
Medical Facilities Planning Branch
2714 Mail Service Center
Raleigh, North Carolina 27699-2714

Re: Comments Regarding the Petition Filed for an Adjusted Need Determination for 16 Skilled Nursing Facility Beds in Mecklenburg County

Dear Ms. Pfeiffer:

This letter is in response to the petition filed by OrthoCarolina for an adjusted need determination for 16 skilled nursing facility (SNF) beds for Mecklenburg County. Please note that we completely respect the physicians and caregivers at OrthoCarolina. We have worked closely with this group for decades and know them to be one of the leading orthopedic practices in the United States. However, as a mission-based healthcare system, we are also strong advocates of our State's certificate of need and health planning processes. With healthcare reform issues and challenges in the forefront, we believe this petition requires significant analysis and consideration by the State Health Coordinating Council (SHCC). We also recommend the petition be denied at this time for the reasons outlined below.

- ☐ The petition is inappropriately filed based on the instructions on page 11 of the 2012 State Medical Facilities Plan (SMFP). Page 11 of the SMFP contains the following instructions:

"People who believe that unique or special attributes of a particular geographic area or institution give rise to resource requirements that differ from those provided by application of the standard planning procedures and policies may submit a written petition requesting an adjustment be made to the need determination given in the North Carolina Proposed State Medical Facilities Plan."

The purpose of the summer petition process is to allow providers or citizens the opportunity to challenge the application of the SMFP need methodologies based on "unique or special attributes of a particular geographic area or institution." This petition is not about "unique or special attributes of a geographic region or institution" in Mecklenburg County. This petition is proposing a facility type that does not currently exist in North Carolina. The petition should have been filed during the winter petition cycle (by the March 7, 2012 deadline). This filing time would have allowed the SHCC the appropriate time to consider the proposal prior to finalizing the 2013 SMFP. This type of proposal requires extensive time by the SHCC to consider its merit and implications. Filing the petition during the summer comment period does not allow for an adequate review.

- ❑ Out of the 100 counties in North Carolina, Mecklenburg County has the second highest surplus of skilled nursing facility beds at 658 beds (or 41.1 times the number of beds requested by the petitioner). Post-surgical knee and hip replacement patients can be easily cared for in existing Mecklenburg County nursing care facilities.

- ❑ The petitioner states that its proposed new model of care would result in cost savings of approximately 30.0 percent when compared to hospital costs. We encourage the SHCC not to consider this one dimensional comparative view of the situation and consider other important issues:

    - The cost differences stated in the petition are primarily a function of lower indirect and fixed costs associated with a freestanding ASC versus the cost structure of a hospital whereby mission-essential services are offered seven days a week, 24 hours a day. Further, the variable cost per procedure for joint replacement for a hospital and a freestanding ASC are virtually the same, especially in situations like the one proposed here where the same surgeons would be performing the procedures in both the hospital and the ASC setting. From a societal point of view, moving procedures out of the hospital into a freestanding ASC often bring no real cost savings overall as the fixed costs of the hospital remain the same.

    - The petitioner notes that its facility would only perform surgery on the healthiest patients who need joint replacement surgery or approximately 10 to 15 percent of the patient population. In essence, patients with increased co-morbidities (or the more difficult cases) would be operated on in the hospital. In addition, Medicare patients would not be cared for in

this type of facility and older patients are typically higher acuity and more costly.

- Hospitals in North Carolina generate income from surgical procedures that fund its not-for-profit, mission-essential community activities, e.g. operating trauma care facilities and other comprehensive services, caring for patients with no ability to pay, etc. The negative consequences of the petitioner's proposal on the State's hospitals must be carefully considered.

- Ambulatory surgery centers (ASCs) owned by physicians in Mecklenburg County do not have a track record for serving a proportionate share of underinsured patients. According to calendar 2010 data from Truven Health Analytics for *outpatient surgical cases*, Charlotte Surgery Center (which is majority-owned by the petitioner) does not serve its proportionate share of Medicaid or uninsured patients compared to Mecklenburg County's hospitals as follows (see Attachment 1):

  - Facility payer mix – Medicaid

    - Mecklenburg County hospitals: 13.7%
    - Charlotte Surgery Center: 3.7%

  - Facility payer mix – uninsured

    - Mecklenburg County hospitals: 9.6%
    - Charlotte Surgery Center: 0.9%

- This petition appears to be in conflict with the current federal prohibition on referral to physician-owned hospitals. Congress has evidenced a long-standing concern with physician-owned specialty hospitals, some of which appear to be implicated in this petition. While there is no *per se* prohibition on the enrollment or certification of physician-owned hospitals participating in the Medicare program, changes to federal Stark law have essentially prohibited the creation of any new physician-owned specialty hospitals that were not Medicare participating providers effective December 31, 2010, by prohibiting referrals by physicians to such services which a hospital would otherwise provide.

☐ As a result of the 2010 SMFP ambulatory surgery demonstration project, the petitioner was awarded a certificate of need to operate a two-room ASC. The petitioner's CON award was not based on performing joint replacement surgery, and/or a 16-bed skilled nursing component. This petition appears to be a concession that the petitioner now has a goal of operating an inpatient facility component. As a result, the CON Section should contact the petitioner to confirm its intent to operate its ASC facility in compliance with the state-approved ASC demonstration project.

We appreciate the opportunity to provide these comments. In the event you have any questions please do not hesitate to contact me at 704-355-0350.

Sincerely,

F. Del Murphy, Jr.
Vice President – Planning

Attachment 1
Ambulatory Surgical Cases - 2010

Cases and Percent of Total Cases

Cases	Mgd Care/Comm	Medicaid	Medicare	Uninsured	Total
Mecklenburg County hospitals	103,173	26,076	43,151	18,327	190,727
Charlotte Surgery Center	6,191	341	2,478	86	9,096
Total	109,364	26,417	45,629	18,413	199,823
Perent of total facility cases					
Mecklenburg County hospitals	54.1%	13.7%	22.6%	9.6%	100.0%
Charlotte Surgery Center	68.1%	3.7%	27.2%	0.9%	100.0%

Source: Truven Health Analytics.